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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,967	01/16/2002	Jesse John Kiefer	A71-07LAV	3892

7590 09/14/2005

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/047,967

Applicant(s)

KIEFER ET AL.

Examiner

Arthur L. Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02-10-05, 08-29-05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 29, 2005 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-9, 11, 13-16, 18, 19, 21-25, 27 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al (WO 00/06127, pages 7, 10, 11, 13-15). Applicant is referred to paragraph nos. 5 and 6, Paper No. 051104 and to paragraph no. 6, Paper No. 100504.

4. Claims 3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al as applied to the claims in paragraph no. 3 above, and further in view of Friello et al or Glass et al. Applicant is referred to paragraph no. 7, Paper No. 051104.

5. Claims 10, 12, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al as applied to the claims in paragraph no. 3 above, and further in view of Cherukuri et al (4,352,823; col.2, lines 24-27 and 45-68; col. 4, lines 37-47 and 68; and col. 8, lines 9-11). Applicant is referred to paragraph no. 8, Paper No. 051104.

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6. Applicant's arguments filed February 10, 2005 and August 29, 2005 have been fully considered but they are not persuasive. Not all of the calcium salts disclosed by Bell et al are more than sparingly soluble in water, as applicant seems to believe. In fact, the calcium gluconate in Bell et al is sparingly soluble in cold water, and calcium carbonate, which is claimed by applicant, is disclosed as part of Bell et al's gum composition.

7. Applicant's contention that gum base is normally present in a chewing gum shell is unsupported by any factual evidence of record. The shell is typically composed of a syrup coating, which coats a gum core including gum base. Nevertheless, Bell et al also contemplates including calcium salts in the gum core as well as the shell. This is disclosed on page 7, line 19 of Bell et al, wherein the nutraceutical may be a mixture of a botanical and a mineral salt; page 11, line 1, where it is stated that the core contains a nutraceutical; and page 14, lines 4-8, wherein it is disclosed that the gum composition includes calcium carbonate.

8. Applicant's contention that the mineral salts in Bell et al are only combined with gum base is not contrary to applicant's claims, especially since applicant's claims do not preclude gum base from the centerfill portion of the chewing gum. Thus, the core portion of the chewing gum in Bell et al is equivalent to applicant's centerfill portion since applicant's claims do not distinguish the centerfill portion from a chewing gum core. Further, applicant's comment, that the fillers in Bell et al, which include calcium carbonate, are incorporated in the outer shell of the gum, is not supported by the disclosure in Bell et al.

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9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

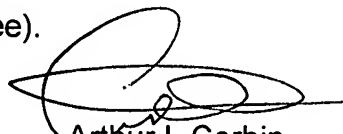
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday to Friday from 10:30 am to 8 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur L Corbin
Primary Examiner
Art Unit 1761
9-8-05